

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: Sándor Sipka et al. : Group Art Unit: 1644
Serial No.: 10/651,136 : Examiner: Nora M. Rooney
Filing Date: August 28, 2003 :
For: **Process for Inhibiting Allergic Disease**

RESPONSE TO NOTIFICATION OF NON-COMPLIANT
APPEAL BRIEF UNDER 37 CFR §41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Notification of Non-Compliant Appeal Brief (37 CFR §41.37) mailed January 29, 2010. In accordance with the Notification, a revised Appeal Brief is submitted herewith, amended as follows:

The **Status of the Claims** section is amended to indicate Claims 4 and 19 are canceled.

The **Claims Appendix** is amended to identify Claims 4 and 19 as canceled and claims 6-9, 11-12, 14-16, and 20-21 as withdrawn.

The **Evidence Appendix** is amended to indicate the Declaration by Dr. Sándor Sipka under 37 C.F.R. 1.132 filed on March 2, 2009 was acknowledged and entered by the Examiner in the May 21, 2009 Office Action. The Evidence Appendix is further amended to list the Declaration by Dr. Sándor Sipka under 37 C.F.R. 1.132 filed on October 16, 2007. The latter was acknowledged and entered by the Examiner in the January 29, 2008 Office Action. Copies of both Declarations are included in the Evidence Appendix.

The **Related Proceeding Appendix** is amended to indicate "none."

The Appeal Brief is believed to be in compliance with 37 CFR §41.37.

Respectfully submitted,

By /Jennifer L. Livingston/
Jennifer L. Livingston
Registration No. 56,404
Attorney for Applicants
DINSMORE & SHOHL LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8359

CLAIMS APPENDIX

Claims on Appeal:

1-52. (Canceled)

53. (Previously Presented) A composition suitable for capturing unwanted molecules, the composition comprising functionally-available cyclodextrin, a cyclodextrin-incompatible surfactant, and a cyclodextrin-compatible surfactant wherein the concentration of functionally-available cyclodextrin is at least about 0.001%, and further wherein the functionally available cyclodextrin is present in an uncomplexed form, or is complexed with material having a cyclodextrin complexation constant of less than about $5,000 \text{ M}^{-1}$ so that the cyclodextrin remains functionally available in the composition to complex with and thereby capture the unwanted molecules.

54. (Previously Presented) A composition according to Claim 53 wherein the concentration of functionally-available cyclodextrin is at least about 0.01%.

55. (Previously Presented) A composition according to Claim 53 wherein the level of functionally-available cyclodextrin is at least about 10% of the level of functionally-available cyclodextrin which would be present in an equivalent composition containing none of the cyclodextrin-incompatible material.

56. (Previously Presented) A composition according to Claim 55 wherein the level of functionally-available cyclodextrin is at least about 30% of the level of functionally-available cyclodextrin which would be present in an equivalent composition containing none of the cyclodextrin-incompatible material.

57. (Previously Presented) A composition according to Claim 56 wherein the level of functionally-available cyclodextrin is at least about 50% of the level of functionally-available cyclodextrin which would be present in an equivalent composition containing none of the cyclodextrin-incompatible material.

58. (Previously Presented) A composition according to Claim 53 wherein at least about 10% of the total cyclodextrin present in the composition is in functionally-available form.

59. (Previously Presented) A composition according to Claim 58 wherein at least about 30% of the total cyclodextrin present in the composition is in functionally-available form.

60. (Previously Presented) A composition according to Claim 59 wherein at least about 50% of the total cyclodextrin present in the composition is in functionally-available form.

61. (Previously Presented) A composition according to Claim 53 wherein the composition comprises from about 0.01% to about 5%, by weight, of functionally-available cyclodextrin.

62. (Previously Presented) A composition according to Claim 61 wherein the composition comprises from about 0.1% to about 4%, by weight, of functionally-available cyclodextrin.

63. (Previously Presented) A composition according to Claim 53 wherein the composition comprises from about 5% to about 40%, by weight, of functionally-available cyclodextrin.

64. (Previously Presented) A composition according to Claim 63 wherein the composition comprises from about 7% to about 15%, by weight, of functionally-available cyclodextrin.

65. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-incompatible surfactant has a complexation constant with cyclodextrin of greater than about $5,000 \text{ M}^{-1}$ and the cyclodextrin-compatible surfactant has a complexation constant with cyclodextrin of no greater than about $5,000 \text{ M}^{-1}$.

66. (Previously Presented) A composition according to Claim 65 wherein the cyclodextrin-incompatible surfactant has a complexation constant with cyclodextrin of greater than about $8,000 \text{ M}^{-1}$ and the cyclodextrin-compatible surfactant has a complexation constant with cyclodextrin of no greater than about $3,000 \text{ M}^{-1}$.

67. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-incompatible surfactant has a ClogP value of at least about 3.

68. (Previously Presented) A composition according to Claim 67 wherein the cyclodextrin-incompatible surfactant has a ClogP value of at least about 3.5.

69. (Previously Presented) A composition according to Claim 53 wherein the composition comprises molecular aggregates comprising the cyclodextrin-compatible surfactant and the cyclodextrinincompatible surfactant.

71. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-compatible surfactant has a critical micelle concentration (CMC) not more than about 10^{-2} mol/l.

72. (Previously Presented) A composition according to Claim 71 wherein the cyclodextrin-compatible surfactant has a critical micelle concentration (CMC) not more than about 10^{-3} mol/l.

73. (Previously Presented) A composition according to Claim 72 wherein the cyclodextrin-compatible surfactant has a critical micelle concentration (CMC) not more than about 10^{-4} mol/l.

74. (Previously Presented) A composition according to Claim 53 wherein a mixture of all surfactants present in the composition has a critical micelle concentration (CMC) of not more than about 10^{-2} mol/l.

75. (Previously Presented) A composition according to Claim 74 wherein the mixture of all surfactants present in the composition has a critical micelle concentration (CMC) of not more than about 10^{-3} mol/l.

76. (Previously Presented) A composition according to Claim 75 wherein the mixture of all surfactants present in the composition has a critical micelle concentration (CMC) of not more than about 10^{-4} mol/l.

77. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-incompatible surfactant has a critical micelle concentration (CMC) of greater than about 10^{-2} mol/l.

78. (Previously Presented) A composition according to Claim 53 wherein the composition comprises at least one surfactant which has critical micelle concentration (CMC) greater than 10^{-2} mol/l and wherein a mixture of all surfactants present in the compositions has critical micelle concentration (CMC) not more than about 10^{-2} mol/l.

79. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-compatible surfactant has a complexation constant with cyclodextrin of no greater than about $5,000 \text{ M}^{-1}$.

80. (Previously Presented) A composition according to Claim 79 wherein the cyclodextrin-compatible surfactant has a complexation constant with cyclodextrin of no greater than about $3,000 \text{ M}^{-1}$.

81. (Previously Presented) A composition according to Claim 53 in which the cyclodextrin-compatible surfactant is a nonionic surfactant.

82. (Previously Presented) A composition according to Claim 81 wherein the nonionic surfactant has a molecular weight of at least about 250.

83. (Previously Presented) A composition according to Claim 79 wherein the molecular aggregates are micelles or vesicles comprising the cyclodextrin-compatible surfactant and the cyclodextrin-incompatible surfactant.

84. (Previously Presented) A composition according to Claim 79 wherein all surfactants in the composition form part of the molecular aggregates.

85. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-compatible surfactant is selected from the group consisting of block copolymer surfactant, siloxane surfactant, anionic surfactant, castor oil surfactant, sorbitan ester surfactant, polyethoxylated fatty alcohol surfactant, polypropoxylated fatty alcohol surfactant, glycerol mono-fatty acid ester surfactant, polyethylene glycol fatty acid ester surfactant, polypropylene glycol fatty acid ester surfactant, fluorocarbon surfactant, and mixtures thereof.

86. (Previously Presented) A composition according to Claim 85 wherein the cyclodextrin-compatible surfactant is selected from the group consisting of castor oil surfactant, sorbitan ester surfactant, polyethoxylated fatty alcohol surfactant, polypropoxylated fatty alcohol surfactant, glycerol mono-fatty acid ester surfactant, polyethylene glycol fatty acid ester surfactant, polypropylene glycol fatty acid ester surfactant, fluorocarbon surfactant, and mixtures thereof; wherein the cyclodextrin-compatible surfactant is preferably a castor oil surfactant.

87. (Previously Presented) A composition according to Claim 53 wherein the composition additionally comprises a polymer wherein a mixture of polymer and all surfactants present in the composition has a CMC of not more than about 10^{-2} mol/l.

88. (Previously Presented) A composition according to Claim 87 wherein the mixture of polymer and all surfactants present in the composition has a CMC of not more than about 10^{-3} mol/l.

89. (Previously Presented) A composition according to Claim 88 wherein the mixture of polymer and all surfactants present in the composition has a CMC of not more than about 10^{-4} mol/l.

90. (Previously Presented) A composition according to Claim 87 wherein the composition comprises at least one ionic surfactant and in which the polymer is nonionic or has a charge opposite to that of the surfactant.

91. (Previously Presented) A composition according to Claim 90 wherein the ionic surfactant is a cyclodextrin-compatible surfactant.

92. (Previously Presented) A composition according to Claim 53 wherein the cyclodextrin-compatible surfactant is present at a concentration above its CMC.

93. (Previously Presented) A composition according to Claim 53 wherein the composition is a composition for capturing malodorous molecules.

94. (Previously Presented) A composition according to Claim 93 wherein the composition is a cleaning product.

95. (Previously Presented) A composition according to Claim 94 wherein the cleaning product is a liquid cleaning product, a fabric refresher, a hair care product, a personal washing product, a deodorant, or a composition for impregnation into a wipe.

96. (Previously Presented) A composition according to Claim 95 wherein the cleaning product is a fabric refresher product.

EVIDENCE APPENDIX

None.

RELATED PROCEEDING APPENDIX

None.